

1 retaliate against an employee for filing a worker's compensation claim. Jurisdiction is predicated
2 under these code sections as well as 28 U.S.C. § 1331 as this action involves a federal question.

3 3. At all relevant times, Defendant CLARK COUNTY, a political subdivision, and
4 municipality including its department, CLARK COUNTY SCHOOL DISTRICT (hereinafter
5 "Defendant" or "CCSD") employed fifteen (15) or more employees on each working day in each
6 of 20 or more calendar weeks in the current or preceding calendar year from which the
7 discrimination took place, and they are therefore subject to the provisions of the ADA.

8 4. The events or omissions giving rise to Plaintiff's claim occurred in this judicial
9 district, thus venue is proper here pursuant to 28 USC §1391(b)(2), and the ends of justice so
10 require.

11 **PARTIES**

12 5. Plaintiff, Eval, is a citizen of the United States and a resident of the State of
13 Nevada, County of Clark and City of Logandale Vegas.

14 6. Plaintiff is informed and believes and thereon alleges that at all relevant times
15 giving rise to the claims asserted, Plaintiff was employed in Las Vegas, Nevada by Defendant
16 CCSD.

17 7. CCSD is an employer within the meaning of 42 USC §12111(5)(A).

18 **EXHAUSTION OF REMEDIES**

19 8. Plaintiff timely filed a "Charge of Discrimination" with the Equal Employment
20 Opportunity Commission ("EEOC") and was issued a Notice of Right to Sue by the EEOC on July
21 14, 2014, a copy of which is attached to Complaint as Exhibit "A".

22 **FIRST CAUSE OF ACTION**

23 **(For Disability Discrimination and Failure** 24 **to Accommodate under the ADA)**

25 9. Plaintiff Eval incorporates the allegation set forth in paragraphs 1 through 8,
26 inclusive, as if fully set forth herein.
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1 10. On or about October 8, 2001, Plaintiff was hired by CCSD and at the time of his
2 termination he held the position of Head Custodian I.

3 11. On April 23, 2012 Eval suffered an injury to his left leg and left calf at work when
4 he tried to help a truck driver bring a pallet of paper weighing approximately 2,300 pounds into an
5 entrance at the school he worked at. The pallet got stuck on the carpet in the entrance and when
6 Eval helped the truck driver push the pallet into the entrance he heard a "pop" in his left calf and
7 felt a sharp pain in the calf.

8 12. Eval was diagnosed with among other things, left calf sprain and strain, chronic left
9 calf pain and eventually granted a permanent partial disability award of four (4%) percent on a full
10 body basis.

11 13. From April 24, 2012 until July 18, 2012 Plaintiff was unable to work and was
12 granted Family Medical Leave.

13 14. Effective August 1, 2012, Eval was approved for a Workers' Compensation Leave
14 of Absence without pay.

15 15. On October 11, 2012, Plaintiff's treating physician released Eval back to full duty
16 no restriction but Plaintiff did not get notification of this release back to work until October 18,
17 2012.

18 16. On October 22, 2012, Eval attempted to go back to work full duty, but was unable
19 to use the backpack vacuum that straps onto your back to vacuum floors in the school. He was
20 unable to use this vacuum because it weighted about 35 lbs. and resulted in Plaintiff being unable
21 to keep his balance while using the vacuum.

22 17. Thereafter Eval applied for a Medical Leave of Absence without pay per Clark
23 County School District Regulation 4351.

24 18. Then on November 7, 2012, Plaintiff received a letter from CCSD notifying him
25 that he was involuntarily resigning and as such was being recommended for dismissal. Eval
26 refused to sign this letter.
27
28

1 19. After Eval received the November 7, 2012 letter he called Connie McDuffie in the
2 Human Resources and asked her why he received this letter given the fact that he already applied
3 for a extended medical leave.

4 20. McDuffie told Eval to just ignore the letter because Plaintiff had already been
5 approved for a extended medical leave.

6 21. On November 19, 2012, Eval received a letter from CCSD stating that he has been
7 approved for a Medical Leave of Absence without pay per Clark County School District
8 Regulation 4351 from October 23, 2012 through October 22, 2013.

9 22. Then inexplicitly, Plaintiff received a letter from CCSD dated December 5, 2012
10 saying that they were *not* going to modify the decision stated in CCSD's November 7, 2012 letter
11 recommending his dismissal.

12 23. Plaintiff's disabilities could have been accommodated by not having him lift or
13 push heavy objects and not having him walk or stand for extended periods of time or climb
14 ladders.

15 24. Eval believes that his job as Head Custodian I could have been modified so that
16 other custodians could have done these activities, as a accommodation to Plaintiff and his
17 disabilities, without creating an undue hardship to CCSD.

18 25. Plaintiff further believes that he could have been given an alternative job with
19 CCSD that met these restrictions, but Defendant failed to interact with Eval to see if a reasonable
20 accommodation was possible by either job modification or finding him an alternative job.

21 26. Eval believes, alleges, and will prove at trial that Defendant has willfully failed to
22 accommodate Plaintiff's disabilities, even though reasonable accommodations were possible
23 without causing an undue hardship to CCSD.

24 27. Eval further believes, alleges, and will prove at trial that Defendant's decision to
25 terminate Plaintiff was based on his disabilities and thus was in violation of the ADA.

26 28. As a direct, foreseeable, and legal result of the Defendant's disability
27 discrimination including failure to accommodate Plaintiff's disabilities and terminating Eval's
28

1 employment because of his disabilities, Plaintiff has suffered, overall economic losses in earnings,
2 bonuses, job benefits and expenses, in an amount to be proven at trial which exceeds the minimum
3 jurisdictional limits of this Court.

4 29. As a further direct, foreseeable, and legal result of the Defendant's disability
5 discrimination including failure to accommodate Plaintiff's disabilities and terminating Eval's
6 employment because of his disabilities, Plaintiff has suffered indignity, mental anguish,
7 humiliation, emotional distress, nervousness, tension, anxiety, recurring nightmares and change in
8 sleep patterns, depression, inconvenience and loss of enjoyment of life and other pecuniary losses,
9 the extent of which is not fully known at this time, for which Plaintiff seeks damages in an amount
10 in excess of the minimum jurisdictional limits of the Court, also to be proven at the time of trial.

11 30. In acting as they did, Defendant knowingly, willfully, and intentionally acted in
12 conscious disregard of Plaintiff's rights. Their conduct was despicable, has subjected Plaintiff to
13 oppression, and it warrants an award of punitive and exemplary damages in favor of Plaintiff, in a
14 sum according to proof at trial.

15 31. Plaintiff claims the damages alleged herein, together with prejudgment interest as
16 provided by law, in a sum according to proof at trial.

17 32. Plaintiff has incurred, and continues to incur, attorney's fees in the prosecution of
18 his claims. Plaintiff therefore seeks an award of reasonable attorney's fees, in a sum according to
19 proof at trial.

21 **SECOND CAUSE OF ACTION**

22 **(For Interference and Retaliation**
23 **in Violation of the FMLA)**

24 33. Plaintiff Eval incorporates the allegations set forth in paragraphs 1 through 32,
25 inclusive, as if fully set forth herein.

26 34. This cause of action is brought pursuant to FMLA as it involves a claim by Plaintiff
27 for interference and retaliation in taking Family Medical Leave which is governed by the FMLA.
28

1 retaliation for filing a claim for Worker's Compensation. See *Hansen v. Harrah's*, 675 P.2d 394
2 (1984); *Torre v. J.C. Penny Co.*, 916 F.Supp. 1029 (D. Nev. 1996).

3 44. As set forth above, on April 23, 2012 Eval suffered an injury to his left leg and left
4 calf at work and thereafter was unable to return to full duty and instead required medical leave
5 including a Workers' Compensation Leave of Absence until he was abruptly terminated, which
6 became final on December 5, 2012.

7 45. Since the occurrence happened within the course and scope of Plaintiff's
8 employment with CCSD, Plaintiff filed a worker's compensation claim.

9 46. Plaintiff believes, alleges, and will prove at trial that Defendant's decision to
10 terminate Eval was because Plaintiff filed a worker's compensation claim and requested treatment
11 and time off pursuant to the worker's compensation laws and other leave statutes.

12 47. As a direct, foreseeable, and legal result of the Defendant terminating Plaintiff's
13 employment because he filed a worker's compensation claim, Eval has suffered and continues to
14 suffer, substantial losses in earnings, bonuses, job benefits and expenses, in an amount to be
15 proven at trial which exceeds the minimum jurisdictional limits of this Court.

16 48. As a direct, foreseeable, and legal result of the Defendant terminating Plaintiff's
17 employment because he filed a worker's compensation claim, Plaintiff has suffered indignity,
18 mental anguish, humiliation, emotional distress, nervousness, tension, anxiety, recurring
19 nightmares, depression, inconvenience and loss of enjoyment of life and other pecuniary losses, in
20 an amount to be proven at trial which exceeds the minimum jurisdictional limits of this Court.

21 49. In acting as they did, Defendant knowingly, willfully, and intentionally acted in
22 conscious disregard of Plaintiff's rights. Their conduct was despicable, has subjected Plaintiff to
23 oppression, and it warrants an award of punitive and exemplary damages in favor of Plaintiff, in a
24 sum according to proof at trial.

25 50. Plaintiff claims the damages alleged herein, together with prejudgment interest as
26 provided by law, in a sum according to proof at trial.
27
28

EXHIBIT

A

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Mark Eval**
Po Box 1764
Overton, NV 89040

From: **Las Vegas Local Office**
333 Las Vegas Blvd South
Suite-8112
Las Vegas, NV 89101



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

487-2013-01012

Michael Mendoza,
Investigator

(702) 388-5057

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**, or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

JUL 14 2014

On behalf of the Commission

Enclosures(s)

Amy Burkholder,
Local Office Director

(Date Mailed)

cc:

Thomas Rodriguez
Executive manager, CCSD
DIVERSITY & AFFIRMATIVE ACTION PROORAM
1415 Whipple Ave
Logandale, NV 89021